

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NOS. AOF-25143-042, AOF-25144-042, AOF-25364-042 & AOF-25201-042
PERMIT NOS. 830-0077 & 830-0078
NOTICE OF NON-COMPLIANCE NOS. 11-0465, 11-0403, 11-0401 & 11-0466
CESSATION ORDER NOS. 01-0805, 01-0804, 01-0808 & 01-0809**

LYNDON PROPERTY INSURANCE COMPANY, INC. (SURETY)
AND FRONTIER MINING COMPANY (PERMITTEE)

PETITIONERS

VS.

**SECRETARY'S FINAL ORDER
AS TO THE PERMITTEE, FRONTIER MINING COMPANY**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

RESPONDENT

* * * * *

This consolidated matter is before the Secretary upon the Report and Recommended Order of the Hearing Officer, and the Secretary having considered the Report and Recommendations and any exceptions and responses, and being fully and sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommendations entered in the record on [7/1/03], 2003, are **ADOPTED** and incorporated by reference and made a part herein, as if set forth verbatim.

2. The Petitioner, Frontier Mining Company ("Frontier"), **HAS WAIVED ALL RIGHTS** to a formal hearing to contest the Cabinet's determinations of bond forfeiture relating to Permit Nos. 830-0077 and 830-0078.

3. As evidenced by the Secretary's Order in File Nos. PAC-25143-I, PAC-25144-I, & PAC-25201-I, Frontier **HAS VIOLATED** the conditions of Surface Coal Mining and Reclamation Operations Permit Nos. 830-0077 and 830-0078, the Kentucky Surface Mining Laws and the regulations promulgated pursuant thereto, as cited in Notice of Non-Compliance

Nos. 11-0465, 11-0403, 11-0401 & 11-0466 and Cessation Order Nos. 01-0805, 01-0804, 01-0808 & 01-0809.

4. Permit Nos. 830-0077 and 830-0078 are **REVOKED**.

5. Frontier has **FAILED TO ABATE** the violations set forth in the Notices of Non-Compliance and the Cessation Orders cited in Paragraph 3 above.

6. Frontier **IS INELIGIBLE** to receive another permit, begin another mining operation or have suspended permits or operations reinstated until such time as it has fully complied with all of the provisions of Kentucky's Surface Mining Laws.

7. This is a **FINAL AND APPEALABLE** order.

So **ORDERED** this the _____ day of _____, 2003.

_____/s/[8/22/03]
HENRY C. LIST, SECRETARY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **SECRETARY'S ORDER** was, on this the _____ day of _____, 2003, mailed by first class mail, postage prepaid to:

HON. DICK ADAMS
28 COURT STREET
MADISONVILLE, KENTUCKY 42431

FRONTIER MINING COMPANY
149 EAST GREENVILLE RD
P O BOX 189
WHITE PLAINS, KY 42464

HON. STEPHEN C. CAWOOD
P.O. DRAWER 128
PINEVILLE, KENTUCKY 40977-0128

LYNDON PROPERTY INSURANCE CO.
520 MARYVILLE CENTRE DR
ST LOUIS MO 63141

and hand delivered to:

S. BRADFORD SMOCK
Natural Resources and
Environmental Protection Cabinet
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, KY 40601

DOCKET COORDINATOR

Distribution:

Division of Field Services
Madisonville Regional Office
LTS
JLD
Order

File

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NOS. AOF-25143-042, AOF-25144-042, AOF-25364-042 & AOF-25201-042
PERMIT NOS. 830-0077 & 830-0078
NOTICE OF NON-COMPLIANCE NOS. 11-0465, 11-0403, 11-0401 & 11-0466
CESSATION ORDER NOS. 01-0805, 01-0804, 01-0808 & 01-0809**

LYNDON PROPERTY INSURANCE COMPANY, INC. (SURETY)

AND FRONTIER MINING COMPANY (PERMITTEE)

PETITIONERS

VS.

**HEARING OFFICER'S REPORT AND
RECOMMENDED SECRETARY'S ORDER
AS TO THE PERMITTEE, FRONTIER MINING COMPANY**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

RESPONDENT

* * * * *

This matter is before the undersigned following the failure of the Defendant, Frontier Mining Company (hereinafter "Frontier"), to appear at a Show Cause Hearing scheduled for April 8, 2003. Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law and Recommendations.

**I. FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1. On May 3, 2001, July 3, 2001 and October 1, 2001, the Natural Resources and Environmental Protection Cabinet sent Determinations of Bond Forfeiture to Frontier Mining Company and Lyndon Property Insurance Company, in which the Cabinet gave notice of the

forfeiture of the performance bonds covering Increment Nos. 3, 4, 5, 6 and 7 on Permit No. 830-0077 and Increment Nos. 2, 3, 4, 8 and 10 on Permit No. 830-0078, due to unabated violations cited in the above-captioned Notices of Non-Compliance and Cessation Orders.

2. The Petitioners timely filed requests for a Formal Administrative Hearing to contest the Cabinet's determinations of bond forfeiture.

3. The fact of the violations cited in the above-referenced Notices of Non-Compliance and Cessation Orders have been affirmed by the Secretary in a final Order entered in File Nos. PAC-25143-I, PAC-25144-I, & PAC-25201-I, and as of the date of the Determination of Bond Forfeiture, the violations had not been abated.

4. Prior to a formal administrative hearing scheduled for December 12, 2002, the Cabinet and Petitioner Lyndon entered into an Agreed Order which was filed on February 3, 2003, as modified by the Modified Agreed Order, entered on June 19, 2003. In the Agreed Order and the Modified Agreed Order, Lyndon agreed to the performance of certain remedial measures necessary to abate some of the violations cited on Permit Nos. 830-0077 and 830-0078, and to achieve the appropriate post-mining land use on some of the permitted increments. Lyndon further agreed to the forfeiture of the performance bond relating to Increment No. 3 on Permit No. 830-0077, due to the inability of the Petitioners to abate the violations on this increment.

5. The Petitioner Frontier was not a party to the February 3, 2003 Agreed Order, and Modified Agreed Order of June 19, 2003, and the reclamation work agreed to therein is being performed by the Petitioner Lyndon, pursuant to KRS 350.130.

6. The Petitioner Frontier notified the Cabinet on December 11, 2002 of its decision not to participate in the formal hearing and to otherwise absent itself from the submission of these consolidated matters for decision.

7. On February 13, 2003, the Cabinet filed a Notice and Motion for Show Cause against Frontier, seeking to resolve any remaining relief against the Permittee pursuant to the Cabinet's pleadings styled "Administrative Response and Statement of Complaint" filed in these actions.

8. On February 19, 2003 a Show Cause Order was entered and served ordering the Petitioner Frontier to appear at a Hearing on April 8, 2003 and show cause why it should not be deemed to have waived its right to an Administrative Hearing. The scheduling order for show cause was properly served on the Defendants in conformity with the Cabinet's regulations governing service of documents or other pleadings. 400 KAR 1:030, §2.

9. On April 8, 2003, the undersigned conducted a Show Cause Hearing as scheduled in the Scheduling Order for Show Cause of February 19, 2003. S. Bradford Smock appeared for the Cabinet. The Hon. Dick Adams appeared on the behalf of the Petitioner Frontier at the show cause hearing. However, Mr. Adams stated that Frontier did not offer any objections to the Cabinet's request for a default order against Frontier and would not show cause as to why Frontier should not be deemed to have waived its right to a hearing under 405 KAR 7:092, §5.

10. Pursuant to 405 KAR 7:092, §5(5), if the Order to Show Cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a Final Order in conformity with the relief requested by the Cabinet in its Administrative Response and Statement of Complaint. Under the provisions of 405 KAR 7:092, §5(5), the Defendant has admitted the allegations made by the Cabinet in its Statement of Complaint and has failed to demonstrate why

a Secretary's Order adverse to its interests should not be entered granting the Cabinet relief it requested in its Statement of Complaint.

II. RECOMMENDATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends that the Secretary enter the attached Order granting the Cabinet relief consistent with its Statement of Complaint.

So recommended this the ____ day of _____, 2003.

__//S//[7/1/03]_____
JAMES L. DICKINSON
HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
35-36 Fountain Place
Frankfort, Kentucky 40601
Telephone: (502) 564-7312
Fax: (502) 564-4973

EXCEPTION RIGHTS

Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this Report, any Exceptions, any Responses and the recommended Order and decide this case.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDED SECRETARY'S ORDER was, on this the ____ day of _____, 2003, mailed by first class mail, postage prepaid to:

HON. DICK ADAMS
28 COURT STREET
MADISONVILLE, KENTUCKY 42431

FRONTIER MINING COMPANY
149 EAST GREENVILLE RD
P O BOX 189
WHITE PLAINS, KY 42464

HON. STEPHEN C. CAWOOD
P.O. DRAWER 128
PINEVILLE, KENTUCKY 40977-0128

LYNDON PROPERTY INSURANCE CO.
520 MARYVILLE CENTRE DR
ST LOUIS MO 63141

and hand delivered to:

S. BRADFORD SMOCK
Natural Resources and
Environmental Protection Cabinet
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, KY 40601

DOCKET COORDINATOR

Distribution:

Division of Field Services
Madisonville Regional Office
LTS
James L. Dickinson, Hearing Officer

